

APPENDIX H – EXECUTIVE ORDER 2003-1

EXECUTIVE ORDER NO. 2003-1

**PROCUREMENT OF GOODS AND SERVICES FROM VENDORS
IN COMPLIANCE WITH STATE AND FEDERAL LAW**

WHEREAS, under Article V, Section 8 of the Michigan Constitution of 1963, each principal department of state government is under the supervision of the Governor, unless otherwise provided by the Constitution, and the Governor must take care that the laws of the State of Michigan are faithfully executed;

WHEREAS, the Management and Budget Act of 1984, 1984 PA 431, MCL 18.1101 to 18.1594, creates and sets forth the duties and powers of the Department of Management and Budget, a principal department;

WHEREAS, under section 261(1) of the Management and Budget Act of 1984, 1984 PA 431, MCL 18.1261(1), the Department of Management of Budget shall provide for the purchase of, the contracting for, and the providing of supplies, materials, services, insurance, utilities, third party financing, equipment, printing, and all other items as needed by state agencies for which the legislature has not otherwise expressly provided;

WHEREAS, section 261(2) of the Management and Budget Act of 1984, 1984 PA 431, MCL 18.1261(2), provides that the Department of Management of Budget shall make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of state contracts;

WHEREAS, section 264 of the Management and Budget Act of 1984, 1984 PA 431, MCL 18.1264, provides that the Department of Management may debar a vendor from participation in the bid process and from contract award upon notice and a finding that the vendor is not able to perform responsibly, or that the vendor, or an officer or an owner of a 25% or greater share of the vendor, has demonstrated a lack of integrity that could jeopardize the state's interest if the state were to contract with the vendor; and

WHEREAS, because the State of Michigan conducts business with a wide-range of private sector vendors, it is important to ensure that state contracting is conducted in an open and honest fashion, that citizens receive the best goods and services at the best price, and to ensure the integrity of the contracting process;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, pursuant to the powers vested in me by the Michigan Constitution of 1963 and the laws of the State of Michigan, do hereby order the following:

I. DEFINITIONS

As used in this Order:

- (a) "Debar" means to suspend, revoke, or prohibit the privilege of contracting with the State of Michigan for the provision of goods or services;
- (b) "Department" means the principal department created by section 121 of the Management and Budget Act, 1984 PA 431, MCL 18.1121; and
- (c) "Vendor" means a person or entity that has contracted with or seeks to contract with the State of Michigan for the provision of goods or services.

II. VENDOR COMPLIANCE WITH STATE AND FEDERAL LAW

(a) The Department may debar a vendor from the consideration for the award of a contract for the provision of goods or services to the State of Michigan or suspend the procurement of goods and services from a vendor if, within the past three (3) years, the vendor, an officer of the vendor, or an owner of a 25% or greater interest in the vendor has:

- (1) Been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract;
- (2) Been convicted of any offense which negatively reflects on the vendor's business integrity, including but not limited to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, state or federal antitrust statutes;
- (3) Been convicted of any other offense, or violated any other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the Department, indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan. An offense or violation under this subdivision may include, but is not limited to, an offense under or violation of: the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106; the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922; 1965 PA 166 (law relating to prevailing wages on state projects), MCL 408.551 to 408.558; 1978 PA 390 (law relating to payment of wages and fringe benefits), MCL 408.471 to MCL 408.490; or a willful or persistent violation of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL 408.1001 to 408.1094;
- (4) Failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits;
- (5) Violated Department bid solicitation procedures or violated the terms of a solicitation after bid submission;
- (6) Refused to provide information or documents required by a contract, including but not limited to information or documents necessary for monitoring contract performance;
- (7) Failed to respond to requests for information regarding vendor performance, or accumulated repeated substantiated complaints regarding performance of a contract/purchase order; or
- (8) Failed to perform a state contract or subcontract in a manner consistent with any applicable state or federal law, rule or regulation.

(b) If the Department finds that grounds to debar a vendor exist, it shall send the vendor a notice of proposed debarment indicating the grounds and the procedure for requesting a hearing. If the vendor does not respond with a written request for a hearing within twenty (20) calendar days, the Department shall issue the decision to debar without a hearing. The debarment period may be of any length, up to eight (8) years. After the debarment period

expires, the vendor may reapply for inclusion on bidder lists through the regular application process.

III. IMPLEMENTATION

(a) The Director of the Department and agency heads shall revise written departmental rules, policies, and procedures, including but not limited to the Administrative Guide to State Government, to conform with this Executive Order, the Management and Budget Act, and the terms of existing contracts with vendors.

(b) Department directors, agency heads and supervisors shall be responsible for familiarizing employees with this Executive Order and with Departmental or agency rules, policies and procedures and implementing this Executive Order and for enforcing compliance within the scope of their authority.

IV. MISCELLANEOUS

(a) Nothing in this Order should be construed to in any way impair the obligation of any existing contract between a vendor and the State of Michigan.

(b) The invalidity of any portion of this Order shall not affect the validity of the remainder the Order.

This Executive Order is effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this _____ day of January, 2003

Jennifer M. Granholm
GOVERNOR

BY THE GOVERNOR:

SECRETARY OF STATE

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